

November 5, 2015

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Susan M. Hudson, Clerk
Vermont Public Service Board
112 State Street
Montpelier, VT 05620-2701

Re: Docket No. 7970: Phase 1 of the Addison Rutland Natural Gas Project Request for
Non-Substantial Change Determination

Dear Mrs. Hudson:

With this letter, Vermont Gas Systems, Inc. ("Vermont Gas," "VGS," or the "Company") is providing the Public Service Board (the "Board") with notice and seeking approval of an additional non-substantial change (the "Project Change") to Phase 1 of the Addison Rutland Natural Gas Project ("Phase 1" or the "Project") approved in Docket 7970.

The Project Change concerns a proposed alignment reroute in the vicinity of Rotax Road in Monkton. The proposed reroute will reduce schedule and cost risk, reduce natural resource impacts, and avoid archeological impacts.

I. Overview

As the Board is aware from Vermont Gas' prior non-substantial change filings, certain changes have arisen over time, either in response to field conditions, including the opportunity for potential construction efficiencies, and/or in response to landowner requests. The same is true with this Project Change as it avoids a parcel of land where Vermont Gas has, to date, been unable to secure an easement from the landowner and avoids a horizontal directional drill ("HDD"), which is anticipated to reduce construction and schedule risk.

It should also be noted that to the extent the Project Change requires amendments to the Company's permits from the Agency of Natural Resources ("ANR") or its Army Corps of Engineers Section 404 permit, Vermont Gas will apply for all the necessary permit amendments.

Vermont Gas has evaluated the potential impacts of the Project Change and concluded that it presents no potential for significant impacts to any of the relevant Section 248(b) criteria. The Project Change has also been reviewed with ANR and the Department of Public Service (the "Department") and the Addison County Regional Planning Commission. It has also been approved by the Town of Monkton Selectboard. Additionally, Vermont Gas has executed options for the land rights associated with the Project Change. Finally, the current Project budget of \$154 million is adequate to address this change and no budget adjustment is necessary.

Accordingly, Vermont Gas submits that the proposed Project Change is non-substantial and provides an improvement to the Project without raising substantial issues with respect to any of the applicable Section 248 criteria, and respectfully requests a determination from the Board that the change does not represent a substantial change to or a material deviation from the approved Project.

In support of this request, included with this letter are the following attachments:

- Attachment 1: Non-Substantial Change Summary Memorandum from John Stamatov, Project Manager, together with a Non-Substantial Change Summary Table as Attachment 1A detailing the proposed change; orthographic mapping depicting the location of the change as Attachment 1B; and updated EPSC Plan Sheets as Attachment 1C.
- Attachment 2: Natural Resource Assessment Memorandum from Jeffery A. Nelson Joshua Sky, VHB, including an updated Natural Resource Plan set as Attachment 2A and a table cataloguing the status of ANR permit amendments as well as potential impacts upon the natural resource, aesthetic, and historic site criteria as Attachment 2B.
- Attachment 3: Aesthetics Review Memorandum from Michael J. Buscher, T.J. Boyle Associates.
- Attachment 4: Archaeological and Historic Resources Memorandum from John G. Crock, UVM CAP.
- Certificate of Service

The remainder of this letter provides the non-substantial change legal framework (provided in previous non-substantial change filings but repeated here for ease of reference) and conclusion supporting Vermont Gas' request.

II. Non-Substantial Change Analysis

By way of background, on December 23, 2013, the Board approved the construction of the Project and issued a Certificate of Public Good ("CPG") to that effect. Condition No. 1 of the CPG states that "[c]onstruction, operation, and maintenance of the proposed Project shall be in accordance with the plans and evidence as submitted in this proceeding. Any material deviation from these plans or a substantial change to the Project must be approved by the Board."

Pursuant to Board Rule 5.408, an amendment to a CPG is required "for a substantial change" to an approved project, defined as "a change in the approved proposal that has the potential for significant impact with respect to any of the criteria of Section 248(b) or on the general good of the State under Section 248(a)." Even where a revised project would satisfy the standards of Section 248 "more easily than the original design," the statute requires that the Board rather than the petitioner find that the standards are satisfied.¹ Nevertheless, the Board has cautioned that it

¹ *Petition of Cross Pollination, Inc.*, Docket No. 7645, Order of 10/29/12 at 4; *See also Investigation into Citizens Utils. Co.*, Docket Nos. 5841/5859, Order of 6/16/97, at 131-33.

does not “wish to discourage petitioners from filing potential improvements to a proposed project for fear that additional procedural steps would significantly delay the proceeding.”² The Board has further observed “that it is not unexpected for plans for a significant energy project to change after we issue it a CPG.”³

A determination as to whether a change is substantial “must be informed by the overall scope of the project.”⁴ For example, in *Amended Petition of UPC Vermont Wind*, the Board concluded that relocating two wind turbines to a different town and moving the location of several other turbines did not constitute a substantial change.⁵ Regarding a subsequent series of changes to the UPC project, the Board likewise determined that relocating a substation and an operations and maintenance building and changing two access roads did not constitute a substantial change.⁶ In reaching this conclusion, the Board rejected claims that the modifications could present significant aesthetic, water quality, and wildlife impacts, relying on the expert reports submitted on behalf of the petitioner together with agency recommendations.⁷

The Board has reviewed a variety of project changes in past dockets and determined that they were non-substantial, including proposals to modify access roads,⁸ relocate telecommunications tower equipment,⁹ install overhead utility poles and clear vegetation in lieu of approved underground utilities,¹⁰ and increase the footprint of a solar project.¹¹ In Docket 7751, the Board concluded that proposed modifications to the Ascutney Substation and associated tie line did not

² *Amended Petition of UPC Vt. Wind, LLC*, Docket No. 7156, Order of 10/1/07 at 8 n.5.

³ *Amended Petition of UPC Vt. Wind, LLC*, Docket No. 7156, Order of 3/24/09 at 7 & n.7 (citing the Northwest Reliability Project (“NRP”) in Docket No. 6860, where “the Board reviewed and approved final design plans for various aspects of the NRP” but “did not require the petitioners to file an amended application for any of the final design plans”).

⁴ *Petition of Cross Pollination, Inc.*, Docket No. 7645, Order of 10/29/12 at 4 (citing Docket No. 7156, Order of 10/1/07 at 7-8; Docket No. 7827, Order of 6/28/12).

⁵ *Amended Petition of UPC Vt. Wind, LLC*, Docket No. 7156, Order of 10/1/07 at 7-8. While this set of changes to the UPC project were prior to CPG issuance, the same non-substantial change standard applies to pre- and post-CPG changes. Compare Board Rule 5.407, with Board Rule 5.408.

⁶ *Amended Petition of UPC Vt. Wind, LLC*, Docket No. 7156, Order of 3/24/09 at 2, 7-12.

⁷ *Id.* at 3, 9-12.

⁸ See, e.g., *Petition of New Cingular Wireless PCS, LLC*, Docket No. 8272, Order of 7/8/15 at 2 (approving relocation of access road along with a sixty-foot increase in length of the road); *Petition of Champlain Valley Solar Farm, LLC*, Docket No. 8248, Order of 1/22/2015 at 2 (approving extension of existing entryway over approximately 150 feet of grass to intersect with approved access).

⁹ *Petition of VTel Wireless, Inc.*, Docket No. 8216, Order of 7/9/2014 at 2 (finding revisions to tower location, concrete pad, and access road to avoid potential impacts to Class III wetland in the area were non-substantial).

¹⁰ *Petition of New Cingular Wireless PCS, LLC*, Docket No. 8326, Order of 6/24/15 at 2 (holding installation of eight utility poles and utility lines along previously approved access road together with a 200’ long by 25’ wide vegetative clearing for interconnection in lieu of approved underground utilities was non-substantial, noting that “[t]o the extent that the new vegetative clearing will create additional aesthetic impact, that impact will be minimal”).

¹¹ *Petition of Bridport Solar Holdings, LLC*, Docket No. 8234, Order of 12/4/2014 at 2 (finding increase of solar-project footprint from 9.16 acres to 9.7 acres was non-substantial).

represent a substantial change to the approved Project.¹² The changes consisted of relocating one approved 46kV structure to a slightly flatter area within the existing right-of-way, replacing existing structures with taller structures, and modifying the tie line configuration.¹³ While the taller structures would be briefly visible to the public traveling Interstate 91, the Board determined that the changes did not raise the potential for significant impacts under the Section 248 criteria, citing the opinions of the petitioners' experts and the recommendation of the Department.¹⁴

As demonstrated in the orders summarized above, the question is whether the proposed changes, considered within the context of the overall project, may result in a significant impact. Where proposed changes do not have the potential to create significant impacts under the Section 248 criteria, the Board makes a determination of non-substantial change and does not require petitioners to amend their CPG.¹⁵ Such is the case here.

As explained in the Natural Resources Assessment Memorandum prepared by VHB and provided as Attachment 2, the proposed Project Change does not raise significant issues with regards to the relevant Section 248(b) criteria. Importantly, the location where the Project Change is proposed is within areas where full field investigations for natural resources have been completed and reviewed by ANR personnel. VHB's analysis concluded that the Proposed Change does not result in any change to its earlier assessment of the Project's impacts upon outstanding resource waters, headwaters, waste disposal, shorelines, rare or irreplaceable natural areas, and necessary wildlife habitat and endangered species criteria, because no change in the assessments would occur. As for the remaining natural resource criteria, VHB concluded that the Project Change would reduce impacts to natural resource features and did not have the potential for significant impacts. In addition, the modification will be undertaken in accordance with existing permits, or in accordance with amendments to existing permits, which VGS will file with ANR.¹⁶

The Aesthetics Review Memorandum included as Attachment 3 concluded that the proposed reroute is minor with respect to aesthetics as it would not materially change Project visibility as compared against the approved plans. The analysis and figures contained in the memorandum demonstrate that the proposed Project Change does not raise significant issues with regards to aesthetics.

¹² *Joint Petition of Vt. Transco LLC*, Docket No. 7751, Order of 2/11/13 at 1, 3.

¹³ *Id.* at 2.

¹⁴ *Id.* at 3.

¹⁵ *Id.*

¹⁶ *See Amended Petition of UPC Vt. Wind, LLC*, Docket No. 7156, Order of 3/24/09 at 12 (rejecting claims that modifications to wind project would result in undue water pollution and noting that "the Board's conclusion that the Project would not result in undue water pollution was based not on a highly detailed review of the site-specific construction activities, but rather on a review of the overall project site and on the protections provided by the federal and state permits").

The Archaeological and Historic Resource Memorandum, included as Attachment 4, demonstrates that the Project Change will avoid archeological sites along the permitted route and does not have the potential for significant impact on archaeological sites or historic properties.

Finally, as described in the Non-Substantial Change Summary Memorandum, the proposed change will have a minimal impact on the overall cost of the Project and does not require modifications to the Project budget of approximately \$154 million as filed with the Board on December 19, 2014, and as reaffirmed in the most recent quarterly cost update filed October 13, 2015. Viewed as a whole, the proposed reroute may result in a slight cost benefit as it will reduce construction and schedule risk by eliminating an HDD and avoiding one of the few parcels where VGS has been unable to secure an easement.

When considered in the context of the overall Project, this is a relatively minor modification that does not meaningfully change the Project's size or scope. It does not represent a modification that has the potential for significant impact on the relevant Section 248 criteria. Therefore, this Proposed Change is non-substantial.

III. Conclusion

Based on the foregoing, Vermont Gas requests that the Board issue a determination that the Project Change described herein constitutes neither a substantial change requiring a CPG amendment nor a material deviation from the approved plans. In addition, because the Project's CPG requires that construction of the Project be done in accordance with the plans and evidence submitted, Vermont Gas respectfully asks that the Board admit the revised exhibits provided herewith to the record of this Docket to ensure compliance with Condition 1 of the CPG.¹⁷

Thank you in advance for your consideration and attention in this matter, and please let VGS know should you have any questions or require additional information about the proposed modification.

Very truly yours,

DOWNS RACHLIN MARTIN PLLC
Attorneys for Vermont Gas Systems, Inc.

By: 

Joshua D. Leckey, Esq.

Enclosures

cc: Certificate of Service
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¹⁷ See *Joint Petitions of Vt. Transco LLC*, Docket No. 7751, Order of 2/11/13 at 3 (finding proposed changes were non-substantial, admitting Petitioners' revised plans to the record of the docket, and providing ten days from date of order for parties to file objections).